

Michigan Department of Civil Service

REGULATION

Appointing Authority Letter Reference:	Effective Date: <u>August 20, 2000 April</u> 25, 1999	Index Reference: Allocation, Compensation, Temporary Assignment, Working Out of Class	Regulation Number: <u>4.124.08</u>
Issuing Bureau: Human Resource Services	Rule Reference: Rules <u>1-3, 4-1.6</u> , 4-5.1, 5-1.1, and 5-3.3 <u>1</u>		Replaces: Reg. 4.12 (CS 6830, May 4, 1997) <u>April 25, 1999</u>
Subject: WORKING OUT OF CLASS FOR NONEXCLUSIVELY REPRESENTED EMPLOYEES			

AUTHORITY

~~The Michigan Constitution of 1963, Article 11, Section 5, states in part:~~

~~*The commission shall classify all positions in the classified service according to their respective duties and responsibilities . . . make rules and regulations covering all personnel transactions and regulate all conditions of employment in the classified service.*~~

1. PURPOSE

The purpose of this regulation is to establish the standards and procedures to determine ~~when compensation for~~ what constitutes working out of class when credential credit is warranted for all employees ~~not covered by collective bargaining agreements. Employees covered by collective bargaining agreements should refer to the working-out-of-class provision in their respective bargaining unit agreements. The collective bargaining agreements may determine the compensation rates, eligibility, and time periods for exclusively represented employees. For nonrepresented employees the regulation determines compensation, allowable time period, and eligibility.~~

This regulation, in whole or in part, will be applied to (1) nonexclusively represented employees and (2) to bargaining unit employees where the bargaining agreement specifically references the Civil Service Regulations, or where working out of class is not addressed.

~~*For selection purposes, this regulation will apply to all employees regardless of bargaining unit.*~~

2. RULE REFERENCE

~~Rule 4-1.6 of the Michigan Civil Service Commission Rules provides the basis for developing regulations and procedures to implement the provisions for working out of class.~~

~~— 4-1.6 Regulations. — The state personnel director shall issue any regulations to implement the provisions of this chapter.~~

A. 1-3 Regulations. --- The state personnel director is authorized to issue regulations that the director deems to be necessary or useful. A regulation issued by the state personnel director shall be binding on the department of civil service unless the commission finds that the regulation violates a rule. The state personnel director shall make all regulations available to employees through their personnel offices and the internet.

~~Section 4-5 of the Michigan Civil Service Commission Rules provides the basis for working out of class temporary assignments.~~

B. 4-5.1 Temporary Assignment. — In accordance with civil service rules and regulations, a An appointing authority may temporarily assign an employee to perform duties and responsibilities of another classification appropriately classified by the department of civil service.~~In such instances the director will allocate such duties and responsibilities.~~ Benefits accruing accrue to the an employee by that in a temporary assignment ~~will be in accordance with such allocation~~classification.

(a) Exception. Provisions of this rule ~~shall do~~ not apply to the following employees:

(1) An employee working in a ~~preauthorized or pattern~~ positions~~;~~

(2) ~~To~~An employees in a positions downgraded for training~~.~~

(3) ~~to~~An employees occupying a positions that ~~are is~~ reallocable reclassifiable.

(4) ~~An or to~~ overall assistants who normally substitutes~~s~~ for their employee's supervisors.

(b) Filing of ~~C~~claims. A claim for working out of class ~~should~~must be presented ~~at the time of occurrence, but~~ no later than ~~twenty (20)~~ workdays ~~from after the discontinuance of the working-out-of-class assignment~~ has been discontinued that caused the claim to be generated. Retroactivity of

any claim is governed by the time limits set forth under these rules and applicable regulations.

~~Chapter 5 of the Michigan Civil Service Commission Rules provides the basis for compensation and fringe benefits.~~

C. **5-1.1 ~~Authority~~Application.** —

(a) **General Application.** All eligible employees in the classified service ~~shall receive be compensated~~compensation and ~~eligible for~~ fringe benefits in accordance with ~~pay and fringe benefit structures approved by the commission~~the compensation plan, except as provided in subsection (b).

(b) **Collective bargaining agreement.** All employees in the classified service are covered by these rules, except that employees covered by an approved collective bargaining agreement differing from the compensation plan are governed by the collective bargaining agreement, where different.

D. **5-3.1 Compensation Schedules.** — The civil service commission shall ~~establish a approve~~ compensation schedules ~~covering all positions in the classified service~~that establish the rates of compensation for each class of positions in the classified service. ~~All~~The rates of ~~pay~~compensation authorized ~~shall be~~ are for full-time employment. Payment for part-time service ~~shall be~~ is proportionate to the time actually worked. If a new classification is added to the classification plan, the state personnel director shall initially establish the rates of compensation for the classification.

3. DEFINITION

A. Additional Definition(s) as used in this regulation:

1.**Working Out of Class** is defined in the Equitable Classification Plan (ECP) Glossary of Terminology as follows:

The temporary assignment to an employee by an appointing authority or designee to perform duties and responsibilities of a different classification. An employee is recognized as working out of class when he/she performs all, or substantially all, of the duties and responsibilities that distinguish the temporary assignment classification from the class in which the employee is currently classified.

For operational purposes, an employee is recognized as working out of class when the employee (1) is assigned to a temporary assignment by an appointing authority, or designee, to perform duties and responsibilities of a different classification; (2) performs all, or substantially all, of the duties and responsibilities which distinguish the temporary assignment from the classification in which employee is currently classified;

and (3) performs in the temporary assignment for the qualifying time period of more than ten (10) consecutive, full workdays.

4. STANDARDS

A. All Classified Employees

A.1. Assignments Authorized

~~1.a.~~1.a. The appointing authority or agency management may assign an employee duties and responsibilities of a different classification on a temporary basis for up to thirteen (13) pay periods ensuring equal opportunity in such assignments.

~~1.b.~~1.b. A working-out-of-class assignment can be made when one of the following situations exists:

~~(a)1.~~(a)1. When it is not practical or feasible, due to time constraints, to establish, recruit for, and fill a temporary position.

~~(b)2.~~(b)2. ~~Where~~When there is an urgent or critical need to have duties and responsibilities performed during the absence of another employee.

~~(c)3.~~(c)3. When the appointing authority is in the process of recruiting to fill the permanent position.

~~(d)4.~~(d)4. ~~Where~~When pending reorganizational changes within the agency or changes in its leadership ~~may impede or delay the agency's ability to fill the permanent position~~ necessitate temporary work assignments.

5. When it is not practical to utilize one of the alternatives listed in Standard II.C.1.

~~Protected-group members must be provided an equal opportunity to be selected for working-out-of-class assignments.~~

8.c. The following situations do not constitute working out of class
Working-out-of-class compensation is not available to:

~~(a)1.~~(a)1. An employee working at a higher level within a recognized preauthorized or preauthorizable class series, pattern positions, or to positions downgraded for training.

~~(b)2.~~(b)2. An overall assistant having direct-line authority and responsibility over the organizational entity. The

classification concept for the assistant takes into consideration the fact that the assistant may be required to act as the chief supervisor in the absence of the supervisor. If the supervisor is absent for more than six (6) consecutive pay periods, the assistant may be compensated for working out of class. The WOC-GPA payment will not include the qualifying time of the first six pay periods.

- ~~(e)~~3. An employee claiming to be working out of class while performing the permanently assigned duties and responsibilities of a position when reallocation-reclassification is possible or has occurred. For example, an experienced-level employee would not be approved for working out of class in aan senioradvanced-level classification, performing the same set of duties, because movement from the experienced level to the senior-advanced level can be accomplished via reallocation-reclassification. A position reallocation-reclassification and a working-out-of-class assignment are mutually exclusive events, meaning that pursuit of both applications relative to a common job assignment cannot be achieved.

7.d. Working out of class is authorized only for work that has been properly classified. When any of the following conditions exist, The the appointing authority must submit a Position Action Request (CS-129T), Position Description (CS-214), and any other necessary documentation for a classification review, prior to processing the working-out-of-class gross pay adjustment (WOC-GPA), when:

- ~~(a)~~ an employee is assigned duties and responsibilities that have not been classified by the BureauDepartment of Civil Service;
- ~~(b)~~ if a question exists between the employee, the appointing authority, or the Bureau-Department of Civil Service as to whether the employee has worked out of class; or,
- ~~(c)~~ if a question exists between the employee, the appointing authority, or the Bureau-Department of Civil Service as to the proper classification of the temporary duties and responsibilities.

8.e. If the appointing authority fails to notify the Bureau-Department of Civil Service of a potential working-out-of-class assignment, the employee may submit a request to the Bureau-Department of Civil Service for a position review, pursuant to Civil Service Commission

Rule 4-2.1a and Civil Service Regulation 4.09, *Employee Generated Position Reviews*, to determine if a working-out-of-class assignment has been made. The employee's request must include a Position Description, describing the temporary duties, and documentation that a request for working-out-of-class compensation was submitted to the appointing authority no later than 20 workdays after the end of the assignment.

~~9.f.~~9.f. The appointing authority may not enter into a grievance settlement agreement for a working-out-of-class assignment when there is a question of what constitutes working out of class or credential credit without review and approval by the ~~Bureau~~Department of Civil Service. Without ~~this involvement and such~~ prior approval, the ~~Bureau~~Department of Civil Service is not obligated to honor the grievance settlement.

~~5.g.~~5.g. Credit, for qualification purposes, will be granted for experience gained in documented working-out-of-class assignments if the ~~incumbent employee~~ meets the minimum education, licensure, registration, and certification requirements for the classification of the temporary assignment. Credit cannot exceed a maximum of 13 pay periods (See Standard II.A.1.a) or twenty-six (26) pay periods (see Standard II.A.1.b).

B2. Compensation Compliance

~~9.a.~~9.a. The Department of Civil Service, ~~Office of Compliance~~, will review all ~~WOG-GPA~~working out of class payments. The appointing authority shall retain adequate documentation to substantiate compliance with these working-out-of-class regulations. Failure to supply adequate documentation, upon request, may result in revocation of the appointing authority's delegated authority to process future ~~gross pay adjustments~~ payments for working-out-of-class compensation.

B. Nonexclusively Represented Employees

1. Authorized

~~4.a.~~4.a. The appointing authority or agency management may assign ~~An an~~ employee ~~may be assigned to work out of his/her classification for a maximum of 26 pay periods.~~ duties and responsibilities of a different classification on a temporary basis:

(1) for up to 13 pay periods if the working out of class assignment is made to provide temporary coverage for a position (coverage of vacant position). ~~Exception requests for extensions of this~~

standard for up to a maximum of one year may be submitted in writing and are subject to the approval of the Department of Civil Service.

(2) for up to 26 pay periods if the working out of class assignment is made to provide temporary coverage during the absence of an employee who is expected to return to their assignment (coverage for employee on leave or project assignment).

b. Upon completion of ~~26 pay periods~~ the maximum allowable time in an out-of-class work assignment, an employee shall not be placed back into the same assignment on a working-out-of-class basis until after an additional 13 pay periods have elapsed.

~~6.c. Where~~ When the appointing authority intends or has reason to believe that the working-out-of-class assignment may last more than 13 pay periods (see Standard II.A.1.a) or 26 pay periods (see Standard II.A.1.b), the appointing authority shall ~~request the establishment of a temporary position and make an limited-term appointment to the position~~. The appointment to the ~~temporary~~ position shall be made in accordance with the *Michigan Civil Service Commission Rules* and regulations governing limited-term appointments.

d. The appointing authority may not enter into a grievance settlement agreement for a working out of class assignment when there is a question of what constitutes working out of class or credential credit without review and approval by the Department of Civil Service. Without such prior approval, the Department of Civil Service is not obligated to honor the grievance settlement.

2. Eligibility Criteria

4.a. **All** of the following criteria must be met for an employee to be eligible for working-out-of-class compensation:

- ~~(a)~~1. The appointing authority or designee must direct the employee to perform the duties and assume the responsibilities of a different classification.
- ~~(b)~~2. The employee must actually perform all, or substantially all, of the duties and responsibilities of the different classification that are different from the employee's classification.
- ~~(c)~~3. The employee must perform the temporarily assigned duties and responsibilities for the qualifying time period of more than ten (10) consecutive, full workdays.

- ~~(d)~~4. The employee ~~must~~should possess the education and experience requirements or be in a classification level that would ultimately satisfy the experience requirement for the working out of class assignment. If the employee does not possess the required education or experience, the appointing authority must have documentation on file as to the reason for utilizing this employee in a working out of class situation. This will be subject to Department of Civil Service audit. Additionally,
~~t~~The employee must possess the state or federal licensure, registration, ~~or~~and certification requirements, as stated on the classification specification for positions in the classification.
- ~~2.b.~~ The use of sick leave, annual leave, or the occurrence of a holiday during the ten-day qualifying time period does not constitute a break or count as part of the ten-day qualifying period. The time lost because of leave usage or a holiday must be made up by an equal number of consecutive workdays before the qualifying time period is complete. Once the ten consecutive-day time period has been satisfied, the employee will be compensated at the working-out-of-class pay rate for all subsequent usage of leave time and for the occurrence of holidays for the duration of the working-out-of-class period.
- ~~3.c.~~ When an employee has performed the duties and responsibilities of a different classification and has satisfied the qualifying time period, the appointing authority ~~shall~~may process a WOC-GPA pay adjustment for the ~~appropriate~~applicable time period. The appointing authority must ~~document the~~enter a comment line identifying the classification and position code number of the position to which the that necessitated the working-out-of-class responsibilities are assigned assignment. This information is subject to review by the Department of Civil Service.
- ~~4.d.~~ An employee is entitled to compensation for working-out-of-class assignments totaling more than ten ~~(10)~~ consecutive, full workdays of actual work, commencing with the first day of the employee's assignment. For the purposes of calculation, any temporary assignment of less than one full workday shall not be considered as an assignment to another classification. In any 12-month period, an employee shall not be assigned to work out of class for more than one ten-consecutive-day period without being compensated at the appropriate higher rate for the full extent of any subsequent assignment(s) to the same working-out-of-class assignment. This compensation is limited to the maximum of 13

pay periods (see Standard II.A.1.a) or 26 pay periods (see Standard II.A.1.b).

~~5.e.~~ An employee temporarily assigned to work in a classification that is assigned an equal or lower pay range than the employee's permanent classification shall ~~be paid at the employee's regular rate of pay~~ not be eligible for working out of class compensation.

~~6.f.~~ ~~The calculation for~~Determination of the working-out-of-class compensation ~~rate will~~ must be in accordance with the standards in the *State of Michigan Department of Civil Service Compensation Plan*. Regulation 5.01 and 5.07.

~~7.g.~~ Claims for working-out-of-class compensation must be submitted no later than 20 workdays from the discontinuance of the assignment. Claims submitted after that time period will not be accepted for compensation purposes.

C. Alternatives to Working Out of Class

1. The ~~Bureau~~ Department of Civil Service has identified several alternatives to working an employee out of class. When the appointing authority becomes aware of an impending need to provide temporary job coverage for a position, during the absence of an employee or prior to the filling of a position vacancy, the following alternatives should be considered instead of working an employee incumbent out of class. They are as follows:

(a) Assign supervisory/managerial assignments to other supervisor/managerial personnel, eliminating the potential for working out of class.

~~(a)(b)~~ Make a limited-term appointment to a ~~newly established temporary parallel~~ position.

~~(b)(c)~~ Make an emergency appointment of ~~thirty (30)~~ 28 days or less, pursuant to Civil Service Commission Rule 3-~~3.44.7~~, "Emergency Appointment," and Civil Service Regulations. Questions regarding the use of the emergency appointment process should be directed to the Bureau Department of Civil Service.

~~(c)(d)~~ Rotate the potential working-out-of-class assignment among several employees in the work area, being mindful of the limitations set forth in this regulation on working an employee out of class.

~~(d)(e)~~ Divide the work function among the other employees in the work area, eliminating the potential for a working-out-of-class assignment.

~~3. An appointing authority shall report any extension of the working-out-of-class assignment for up to an additional 13 pay periods. The reported extension must be submitted in writing to the Bureau of Human Resource Services (Bureau) within 30 days of the continuance of the assignment. The report must include the strategies that the appointing authority is, or will be, using to ensure that the assignment will not continue beyond 26 pay periods. A working-out-of-class assignment and compensation cannot exceed the maximum of 26 pay periods from the initiation of the assignment.~~

4. PROCEDURES

Responsibility

Agency Management or
Employee

Appointing Authority

Appointing Authority
(Cont.)

Action

1. Submits a request for working-out-of-class compensation and documentation to the ~~department's personnel office~~appointing authority of the department.

2. Reviews the request in accordance with the standards set forth in this regulation and other regulations.

3. Determines the appropriate classification and processes a WOC-GPA, in accordance with the compensation plan. If the request is denied, documents the reason.

~~4. Submits a written report to the Bureau if the WOC assignment will extend beyond 13 pay periods.~~

~~4.~~ 5. If the request involves a set of duties that has not been reviewed and classified or a dispute between the employee and the appointing authority as to the proper classification of the temporary assignment, submits a Position Action Request (CS-129~~T~~) form, Position Description (CS-214) form, and any other necessary documentation to the Bureau-Department of Civil Service for a classification review. ~~Waits for the Bureau's review and determination before processing the WOC-GPA.~~

~~Bureau~~Department of Civil Service

Appointing Authority

~~5. 6.~~Reviews the working-out-of-class request that involves a set of duties that has not been previously classified to determine the proper classification, documents it on the Position Action ~~Request, Response,~~ and releases the Position Action Response (CS-129A) form as a "No Action."

~~6. 7.~~If the working-out-of-class request is denied, informs ~~incumbent employee~~ of the working-out-of-class decision and appeal rights.

~~7. 8.~~Receives the Position Action ~~Request~~Response form for the position review.

~~8. 9.~~Processes the approval for ~~the WOC GPA payment~~, if appropriate.

~~10. Informs agency management of the working-out-of-class decision.~~

CONTACT

Questions regarding this regulation should be directed to the ~~Bureau of Human Resource Services,~~ Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909, (517) 373-3048 or 1-800-788-1766, or MDCS ~~-BHRS~~@state.mi.us.

NOTE: Regulations are issued by the State Personnel Director under authority granted in the State of Michigan *Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.